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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,168	12/22/2003	Ulrich Schiestl	DT-6691	7758

30377 7590 10/21/2004

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EXAMINER

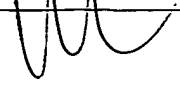
LOPEZ, MICHELLE

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/743,168	Applicant(s) SCHIELSTL ET AL. 	
	Examiner Michelle Lopez	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been received.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-5, 8, 10, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the control device". There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the chamber media-tight". There is insufficient antecedent basis for this limitation in the claim.

In claim 10 and 11, it is not clear what is meant by the recitation: "can be shifted into a fuel expression movement".

Also, in claim 11, it is not clear what is meant by the recitation: "is excited using the control device".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6 and 8-11 are rejected under 35 U.S.C. 103(a) as being obvious over Odoni (US 6,722,548) in view of Veldman (US 5,000,128).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Odoni'548 discloses an internal combustion driven setting tool for driving fastener elements; a fuel source "11" with a fuel feed line "12" from the fuel source "11" to a combustion chamber "13"; at least one dosing device via "14" arranged between the fuel source "11" and the combustion chamber "13"; a control device "20" adjusting and controlling the valve "24"; an electrical actor via electronically controlled valve "24"; and actuation means "15".

With regards to claims 1 and 3, Odoni'548 does not disclose that the dosing device via the mechanical controlled valve "14" has a displacement body arranged in a chamber for forcing fuel out of the chamber and that the displacement body has a displacement volume that is adjustable using a manually operated setting means. However, Veldman'128 teaches a dosing device with a displacement body "32" (Claim 1) arranged in a chamber "30" for the purpose of controlling and forcing the fuel out of the dosing chamber "30" in a controlled manner, wherein the displacement body "32" has a displacement volume that is adjustable using a manually operated setting means "43" (Claim 3) (see col. 3; lines 51-65, and col. 4; lines 50-65). In view of Veldam'128, it would have been obvious to one having ordinary skill in the art to have provided Odoni's invention with a dosing device having a displacement body arranged in a chamber in order to control and force the fuel out of the dosing chamber in a controlled manner, wherein the displacement body has a displacement volume that is adjustable using a manually operated setting means.

With regards to claim 4, Odoni's discloses a sensor means 22 for sensing the ambient parameters and air pressure forwarding the acquired data to a control device "20".

With regards to claim 5, Odoni'548 does not disclose that the sensor means acquired the combustion chamber temperature. However, as Odoni's control means "20" is able to control

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different sensors which communicate and acquire different data and parameters, it would have been an obvious matter of design choice to have provided a sensor means that senses the combustion chamber temperature, since applicant has not disclosed that sensing the combustion chamber solves any stated problem or is for any particular purpose and it appears that Odoni's invention would perform equally well with a sensing means "22" that senses the ambient parameters and air pressure forwarding the acquired data to a control device "20" for the purpose of adjusting and controlling the required combustion fuel.

With regards to claim 6, Odoni'548 does not disclose a chamber with an inlet and outlet and wherein valves are arranged at the inlet and the outlet of the chamber. However, Veldman'128 teaches a chamber "30" with an inlet and outlet and wherein valves "41,42" are arranged at the inlet and the outlet of the chamber for the purpose of directing the fuel out of the chamber in a direction towards a combustion chamber "2". In view of Veldman'128, it would have been obvious to one having ordinary skill in the art to have provided a chamber with an inlet and outlet and wherein valves are arranged at the inlet and the outlet of the chamber in order to direct the fuel out of the chamber in a direction towards a combustion chamber.

With regards to claim 8, Odoni'548 does not disclose that the displacement body is a membrane that closes an opening and is moveable into a chamber defining the displacement volume. However, Veldman'128 teaches a displacement body as a membrane "32" that closes an opening at the vicinity of "34" and is moveable into the chamber "30" for the purpose of defining the fuel displacement volume out to the combustion chamber. In view of Veldman'128, it would have been obvious to one having ordinary skill in the art to have provided a

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displacement body as a membrane that closes an opening and is moveable into a chamber in order to define and direct the fuel displacement volume out to a combustion chamber.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Odoni'548^{in view Veldman} as applied to claim 1 above, and further in view of Achten (US 6,279,517). Odoni'548 as modified by Veldman'128 discloses the invention substantially as claimed. Odoni'548 as modified by Veldman'128 does not disclose that the displacement body is a piston. However, Achten'517 teaches a dosing device "18" with a piston "22" displaceable in a chamber "26" for the purpose of dosing compressed air through to a combustion chamber "16". In view of Achten'517, it would have been obvious to one having ordinary skill in the art to have provided Odoni's invention as modified by Veldman'128 and further having a piston, instead of a membrane (Claim 8), in order to dose compressed air through to a combustion chamber.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lange'195, Smith'771, Zilka'352, Adams'325, Rosenbaum'366, Granacher'047, and Largo'379 are cited to show related inventions.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 703-305-8205. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ML



JOHN SIPOS
PRIMARY EXAMINER